

Washington State Department of Transportation
15700 Dayton Avenue North
Seattle, WA 98133

March 31, 2005

Request For Proposals
Everett HOV Design-Build

ATTENTION: All Short-listed Proposers

Response To Questions No. 7

167. **Question:** RFP Technical Specifications 2.7.1, 2.7.3.7, App M5 Section 2.7.1 of the Technical Specifications states that the pavement limits are indicated in Appendix M5. The appendix indicates the reconstruction of the NB shoulder through the HMA pavement section. Please confirm the need to reconstruct this shoulder given the Lowell slide issue.
Response: The need to reconstruct the shoulders is dependent on decisions made by the Design-Builder. Shoulders only require grinding and HMA overlay if widening is done on the opposite side of the road and either of the following occur: (1) MOT is not put on the shoulder, or (2) MOT is placed on the shoulder and the shoulder holds up to the temporary traffic.
168. **Question:** Will WSDOT sign the shipping documents or manifests for contaminated material or hazardous waste?
Response: Yes, WSDOT will sign the waste manifest.
169. **Question:** RFP Technical Specifications 2.12.4.6, in the first paragraph of Section 2.12.4.6, bridge traffic barriers shall be 2'-10" high in accordance WSDOT LRFD Bridge Design Manual. In fifth paragraph of the same Section, it specifies the bridge rail retrofit and slab cantilever shall conform to AASHTO LRFD. Will WSDOT LRFD be acceptable for the retrofit of rail and slab cantilever?
Response: This is addressed in Addendum #9.
170. **Question:** For permanent facilities, is the stormwater to be removed and treated from within the entire roadway corridor with drainage from ROW not allowed to run onto private property? Or is the intent to capture runoff from pavement surfaces for stormwater treatment, instead of the entire ROW width?
Response: A decision table has been provided by Addendum 7 to Technical Specification 2.13.4.2 clarify this issue.
171. **Question:** Existing cross-drains can be utilized north of Lowell Road. Does this mean that WSDOT intends to have two parallel systems installed (new is required

south of Lowell Road) to be collected at the new Lowell Road vault, which leads to WQF #1? Or can existing cross drains (carrying only WSDOT water) be utilized south of Lowell Road?

Response: A decision table has been provided by Addendum 7 to Technical Specification 2.13.4.2 clarify this issue.

172. **Question:** Page 114 of 299, Technical Specs states “Cross-drains operated and maintained by others shall be protected, kept separate from the project drainage system and maintained at its existing capacity and function”, and “All existing and proposed cross-drains and culverts in the project area shall be sized and/or checked for capacity...” Is the D/B required to check the capacity of all city and county cross-drains in the project area, regardless of whether they carry WSDOT water or not? If we do, will we be given pipe flows for these city/county facilities?

Response: This question is addressed by changes made to Section 2.13 in Addendum #7.

173. **Question:** Section 2.13.4.2.1 (Hydraulic Structures) of the General Provisions document state that “All cross-drainage widening or new cross-drains identified as stream crossings shall be designed in accordance with WSDOT Hydraulics Manual (M23-03) for flow passage and the WDFW Design Manual of Road Culverts for Fish Passage (2003)”. Chapter 3 of the Storm water Technical identifies three stream crossings as Wood Creek, Un-named Creek draining the Lowell basin, and Bigelow Creek. The Storm water Technical Report and the Environmental Assessment indicate there are no salmonids in these creeks, but that resident trout were observed in Wood Creek. Please confirm whether fish passage for salmonids and/or resident trout will be required for Wood Creek, Un-named Creek draining the Lowell basin, and Bigelow Creek flowing beneath I-5.

Response: No work is proposed near these creeks, hence any need to design for fish passage is not required. If any work is proposed near the creeks, then fish passage and permits will be required.

174. **Question:** Section 2.13.4.2.1 (Hydraulic Structures) of the General Provisions document states that “the capacity of all proposed and existing-to-remain inlets, storm drains, ditches, outfalls, and other conveyance structures within the project limits shall be sized and/or checked for capacity and included in the calculations in the Final Storm water Report”. And, Section 2.13.4.2 (Treatment of Runoff) of the same document, addressing Water Quality for Wood Creek and portion of Lowell Basin, calls for “building new conveyance systems in the northbound and southbound I-5 to separate onsite runoff from offsite runoff...”. New conveyance systems are not specifically called out in the RFP for Un-named Creek draining the Lowell basin or Bigelow Creek. Please confirm that all three culverted stream crossings should be evaluated to check the conveyance, and if the conveyance is deemed to be inadequate, that new conveyance culvert designs and new permanent culvert crossing structures will be required.

Response: This is addressed by changes to Technical Specification 2.13 in Addendum #7.

175. **Question:** TS 2.13.4.2.1 The 7th paragraph under sub-heading Cross Drains and Culverts states that the D-B shall not impact any culverts owned by the City of Everett. Please further define an impact (permanent structural or hydraulic impact?). Can a culvert be taken out of service during construction? Can the design add flow to an existing culvert if it is found to still meet criteria and sound engineering principals? Can an existing culvert be replaced with a larger culvert and flow added? Can a culvert be replaced in-kind as part of construction activity around the culvert?

Response: This is addressed in Addendum #7.

176. **Question:** We were not able to locate off-site contributing basin area maps for the Wood Creek Basin or the Lowell Basin in Appendix E or F of the Storm water Technical Report. Please provide a map showing the delineated off-site basin area for the Wood Creek and Lowell Creek basin areas. Please confirm that the off-site flows provided in Table 4.1, 4.2, 4.4, and 4.5 of the Storm water Technical Report correspond to these delineated off-site basin areas.

Response: The Design Office had received offsite basin information from the City of Everett. The final numbers were inserted in the tables 4.1 -4.5. For further information on these offsite basin delineations, the City of Everett may be contacted. The document, which contains this information, is called South Everett Drainage Basins Plan (1986). Please refer to page 33 of the Stormwater Technical Report.

177. **Question:** From LL 546+00 to LL 557+00, the Paving and Barrier Plans show an overlay area, and the Roadway Profiles provide a new profile along the LL Line. The result, as shown in the cross sections, is the new roadway is 12 inches below the existing ground at the left edge of the overlay limit. Is it the intent to provide an overlay? Or to provide the profile as shown in the Plans?

Response: See answers to questions #104 and #105. Additionally, Addendum 5 Bullet # 51 revised the roadway profiles and the paving plans. The WSDOT Conceptual Design for SB I-5 from station LL 544+94 to LL 582+00 is based on the assumption that the profile in this area will be raised to accommodate the ramp width and vertical clearance of the HOV Direct Access On and Off-ramps which pass under mainline. It is acceptable to WSDOT for the Design-Builder to propose a new profile to minimize the reconstruction of SB I-5, or to match existing if there are other means to meet the vertical clearance requirements. If the Design-Builder elects to not raise the profile in this area, an overlay of HMA is required.

178. **Question:** Technical Spec Section 2.14.1.3 states “The Design-Builder shall submit as part of the Proposal documents the Project Roadside Restoration and Aesthetic Master Plan”. Does WSDOT intend for each Proposer to submit this “Master Plan” or just their approach? Sect 2.14.1.5 states “Coordinate the

development of the roadside restoration master plan and aesthetic treatments plan, and the development of city entrance areas,". This seems to indicate that this "Master Plan" would be developed after the project has started

Response: Proposals are required to include the items specified in the Instructions to Proposers.

179. **Question:** The Warranty Bond form (DOT Form 272-006) states that the warranty period shall be for five (5) years; however, Section 2.30.1 Technical Specifications (Addendum 2) states that the term of the Warranty Bond shall be 36 months. What is the term of the Warranty Bond? The warranty bond is to be for 10%. Is this of the contract amount or of the warranted work?

Response: As identified in Addendum #8; section 2.30.1; Design-Builder shall provide a warranty bond commencing on the day of ~~Initial Acceptance~~ Physical Completion (addendum #9), and ending with whichever of the following occurs last:

- i. The end of the General Warranty, or
- ii. The end of the Pavement Warranty, or
- iii. The end of the Roadside Restoration Warranty

The Warranty Bond shall be in the amount of 10% of the Proposal Price.

180. **Question:** General Conditions, 1-03.5, This provision states that ambiguities are not to be interpreted against the drafter of the Contract Documents, which is contrary to the common law and industry practice. We request WSDOT assume responsibility and liability for ambiguities in the Contract Documents.

Response: There will be no change.

181. **Question:** General Conditions, 1-04.1 and 1-08.6, D-B's duties include the obligation to mitigate by re-sequencing its work and re-deploying its forces at the Owner's direction. When combined with other instances of Owner being able to delay project, the risks associated cannot be quantified. The Owner may suspend "at any time for any reason", and notice requirement is "immediate", thus creating an unquantifiable risk for the D-B We request that if WSDOT orders suspension or causes delays, that any such suspension or delays be compensable under GC 1-04.4 and 1-08.

Response Section 1-08.6 Suspension of Work provision currently provides for the Design-Builder to obtain an equitable adjustment for cost and time relating to an unreasonable delay by WSDOT. This is the same language used in the WSDOT Standard Specifications. Section 1-08.8 Extensions of Time states that extensions of Contract Time will be allowed for that period equal to the time WSDOT determines that Critical Path was delayed due to suspensions, delays or interruptions for an unreasonable period of time which are the responsibility of WSDOT. (See 1-08.6). If WSDOT orders a suspension or causes delays, the Design-Builder has a right to seek compensation and time pursuant to the contract as written.

182. **Question:** General Conditions, 1-02.4(1), 1-04.7, 1-02.4(1), 1-05.1 Technical Specifications 2.6.3.2 and 2.6.5.4 Although the standard Differing Site Conditions clause is included under GC 1-04.7, damages must exceed \$2 million in the aggregate before any amounts will be paid, WSDOT has the exclusive authority to determine a differing site condition, the D-B is obligated to conduct additional subsurface investigations with Owner-specified parameters, and “boulders or unexpected objects” are specifically excluded as differing site conditions. We Request that the standard Differing Site Conditions clause not be significantly amended and that common law standards for the Differing Site Conditions clause be applied without monetary or subject matter exceptions.
Response: There will be no change.
183. **Question:** General Conditions, 1-04.4(2) Matters which are **not** appropriately Change Order topics include “delays in governmental approvals” and delays in “third party approvals”, matters over which the D-B has no control and parties with whom the D-B has no privity of contract. We request that any delays in governmental approvals and third party approvals, permits, licenses, or other miscellaneous approvals be time-extendable occurrences allowing for equitable adjustment on 1-04.4 and 1-08.8.
Response: There will be no change.
184. **Question:** General Conditions, 1-07.1 The D-B is obligated to observe all state and Federal laws and regulations “always” and to provide related indemnity to all Indemnified Parties, without making exception for future changes in law (other than only environmental law changes under RCW 39.4.120). We request that future law or regulatory changes of any kind be excluded from the risks the contract of the D-B is to bear, consistent with the common law and industry practice.
Response: This is consistent with WSDOT past practice and the language was taken directly from WSDOT Standard Specifications. No change will be made on this project.
185. **Question:** General Conditions, 1-07.14(1) Although the Washington statutorily-prescribed indemnity standard of comparative negligence applies, this section adds consequential damages for “third party inconvenience, delays, and costs” to contractors and other third parties with whom the D-B has no contractual relationship. In other words, if we are to be liable to indemnify the owner for a third party claim we want to at least have the obligation arise because we were the responsible party. We request that consequential damages to the D-B attributable to Owner or for third party claims with whom the D-B has no contract be eliminated from the Contract Documents. “Similar contracts typically allow a waiver of special, indirect and consequential damages from the Contractor. We request that such a clause be incorporated into the provisions of this contract..
Response: This is the same standard provision used on both California and Colorado design-build projects. It applies to third party claims, which are the result of acts or omissions within the control of the Design-Builder or an entity for

which the Design-Builder is responsible. No change will be made to this provision.

186. **Question:** General Conditions, 1-07.17(11) Time extensions for Utility Delays must be demonstrated to be delays to the Critical Path. Utility coordination should be a responsibility of WSDOT and any related delays need not be exclusively on the Critical Path.
Response: Section 1-07.17 is built on the general concept that the Design-Builder is responsible to coordinate all the utility work. No change will be made to this contract provision.
187. **Question:** General Conditions, 1-08.8 , 1-08.11(1).1, 1-08.11(4) There are to be no time extensions for early completion delays which would otherwise be compensable under the Incentive or Bonus provisions of the contract, except those specified under ¶ 1-012.2 (which is not included among the documents). That risk provision, when coupled with other Suspension and Delay provisions in the Owner's favor, will allow for reduction/deletion of any incentives and bonuses. We request that WSDOT modify the contract to specify that "float" is not owned by either party and that early completion delays should be compensable to the contractor if such delays are Owner-caused or have been for the exclusive benefit of the Owner.
Response: Section 1-08.11(4) provides for a time extension for purposes of calculating the early completion bonus for certain WSDOT caused delays. Also, there is no reference to a 1-012.2 in Division 1.
188. **Question:** Tech Specifications 2.21.1 The Railroad "will dictate its own schedule", and up to 80 trains per day can be anticipated. This is an entity with whom the contractor has no contact and over whom it would have no authority. The prospect of an unidentified number of daily intrusions by the Railroad, and the Railroad's ability to "dictate its own schedule", are unquantifiable risks for the D-B. Railroad related delays should be an Owner responsibility and be compensable with the D-B under GC 1-04.4 and 1-08.8.
Response: The Design-Builder is in the best position to negotiate with the railroad. The Contract requires the Design-Builder to negotiate since they have the knowledge, ability and capability to modify their work schedule and accordingly mitigate the risk. All Proposers are expected to contact the railroad before submitting the Proposal. Per section 2.21.2 addendum 8, the Design-Builder will be required to obtain a Construction and Maintenance agreement and a Right of Entry agreement with the railroad before construction can begin on railroad property.
189. **Question:** Tech Specifications 2.21.2 All railroad rights of entry and related permits and licenses are D-B responsibility. Since the D-B has no authority over our contract with the Railroad, these responsibilities should lie with the WSDOT.
Response: See the answer to question #188

190. **Question:** Technical Specifications 2.30.1, 2.30.2.1, .4, .5, and .7 The General Warranty of 2 years from Physical Completion has a corresponding 2-year additional warranty for any “re-done work”, in effect creates up to a 4-year warranty, well beyond any acceptable industry standard. When coupled with the unlimited liability under ¶ 2.30.2.5, this becomes an extraordinary warranty. We request that an industry standard 1-year warranty apply after Physical Completion, since the WSDOT has the requirement for an extended warranty bond.
Response from AG: The suggestion to reduce to a 1 year warranty is denied. The warranty will end at the end of the Warranty provided that WSDOT accepts the repair work.
191. **Question:** ITP Section 3.4.5, The preliminary payment schedule is required to be submitted with the proposal. The extensive amount of items required for the proposal submittal and the fact that the cost estimate will be completed the day of the proposal due date, creates a difficult proposal closing. We request that the submittal of this payment schedule be delayed to three working days after the proposal is due.
Response: This revision was made in Addendum #8.
192. **Question:** Section 1-07.18(2) General Insurance Requirements 4. Endorsement and Waivers (f) that states “The commercial general liability insurance policy shall be endorsed to state that coverage for Subcontractor employees shall not be excluded.” Please provide a sample of the required endorsement.
Response: The specification is clear as written. See also question #162.
193. **Question:** If during final design the Design Builders traffic analysis shows the need for traffic signals not shown in the conceptual plans, will these be required under the lump sum contract contemplated by WSDOT?
Response: If the Department agrees that the signals are necessary, they would be considered required Work, and would be compensable as a Necessary Basic Configuration Change because “Number and type of signalized intersections” is an element of the Basic Configuration.
194. **Question:** Is an auxiliary lane considered a “lane” in Table 2.20.4.1 Northbound. Allowable Closure Hours and Liquidated Damage Amounts and Table 2.20.4.2 I-5 Southbound Allowable Closure Hours and Liquidated Damages?
Response: Yes.
195. **Question:** Is work performed within the Lowell Neighborhood and Water Quality sites considered to be on WSDOT or City of Everett property for sales tax and use tax purposes?
Response: Water quality sites and City Streets were addressed in Addendum #9. The Lowell hillside drainage easements will be addressed in a drawing in Addendum #10.

196. **Question:** What is the “Q” and invert elevation of the drainage system for the South Everett Direct Access project?
Response: See Addendum #5, item 25.
197. Where existing asphalt shoulders are next to concrete mainline and only a storm pipe is placed within the existing asphalt shoulder, is it acceptable to rotomill to a depth of 0.15’ and replace 0.15” HMA in this section?
Response: This question cannot be answered without a formal design submittal. However, it is possible if the design acceptably addressed issues such as long-term settlement, compaction in a narrow trench, structural adequacy of the final pavement section, vertical and horizontal moisture movement, and aesthetic appearance of the finished product. Note that a patch visible on the surface would not be acceptable.
198. **Question:** RFP Instructions to Proposers Section 3.5.5, the current page limit for Section 5 Quality Management Plan is 100. Is it mandatory that the draft plan is included in Section 5 or can it be an appendix?
Response: The Quality Management Plan is to be included in Section 5. Appendices, as included in the Draft Quality Management plan provided by WSDOT as Appendix D, will not count toward the 100-page maximum.
199. **Question:** RFP Instructions to Proposers Section 3.5.9, this first bullet of Section 3.5.9 states that the channelization plans shall be submitted in accordance with App. O2. App. O2 states that the plans shall be in roll plot form. Are plans submitted in 11x17 plan set format acceptable?
Response: This is addressed in Addendum #9.
200. **Question:** In the response to question 91, it stated " The ITP requires a plan view of EACH bridge and identification of all proposed retaining wall types...type of sound wall..." If this is the case, the 25-page limitation for Section 11, "Structures" won't be enough for all 21 bridges, wall, and sound wall plus the write-ups of proposal. Will WSDOT increase the number of pages to allow for this required information?
Response: This has been modified by Addendum #9.
201. **Question:** Technical Provision 2.6.5.4, Unexpected Objects, provides that risk associated boulders or unexpected objects encountered during construction shall be the sole responsibility of the Design-Builder and shall not constitute as changed condition for the Project. Technical Provision 2.6.5.4 is inconsistent with General Provision 1-04.7, DIFFERING SITE CONDITIONS (CHANGED CONDITIONS); this inconsistency creates ambiguity, please delete Technical Provision 2.6.5.4.
Response: This has been changed by addendum, although not as suggested in the question.

202. **Question:** If the water quality standards provided for in the RFP cannot be achieved using the water treatment methods specified in the RFP, those portions of the Right of Way either designated as or suitable to be Water Quality Sites, and those parcels outside the Right of Way identified in the RFP as Water Quality Sites, will WSDOT, in the alternative:

- i) specify different water quality standards; or
- ii) allow the Design Builder to utilize water treatment methods different than those specified in the RFP; or
- iii) provide Design Builder more land suitable to be Water Quality Sites?

Response:

- i) WSDOT will not lower the water quality standards.
- ii) Design-Builder may use different treatment methods than described at WQ site 2, 3, 4, 5, and 6 only.
- iii) WSDOT will not provide additional land. If additional land is required by the Design-Builder's design, it shall be appropriated by the Design-Builder and all costs shall be included in the Contract Price.

203. **Question:** Please refer to General Provision 1-04.7, DIFFERING SITE CONDITIONS (CHANGED CONDITIONS). We have been unable to identify any Harmful/Hazardous Materials that are in a category for which there are unit prices in the Proposal Documents, reference to such unit prices creates ambiguity and should be deleted.

Response: This is a general specification for design build projects, there is no unit price in the proposal document for this project. There is no ambiguity because there is no unit price in the Price Proposal.

204. **Question:** Where lowering of City of Everett Streets to provide minimum vertical clearance requires utility relocations, is the relocation of the utilities covered by the City of Everett franchise agreements – specifically are the costs of lowering gas lines and communication lines within city streets to meet WSDOT required clearances Category 1 or Category 2 utilities relocations?

Response: Refer to Appendix U1 in Addendum 7 et al.

205. **Question:** Please refer to General Provision 1-04.7, DIFFERING SITE CONDITIONS (CHANGED CONDITIONS):

- a) We suggest WSDOT characterize the first \$2,000,000 worth of differing site conditions an “allowance” rather than a “cost”. If this item is characterized as a “cost” prospective Design Builders will each need to assess the risk of differing site conditions and will add contingency amounts to their respective prices.
- b) If the item (a) above is not accepted, please revise the Proposal Documents to expressly provide that “first \$2,000,000 worth of Differing Site Conditions”

cost includes Design Builder's normal mark-ups and delay costs suffered as a result of the Differing Site Condition.

- c) We suggest WSDOT broaden the Force Majeure relief offered under the Contract, but protect its interests by including such relief within the \$2,000,000 Differing Site Conditions "deductible".

Response: a) No change. b) No change. c) No change.

206. **Question:** The old N/B Broadway to Broadway connector bridge that spans the S/B Broadway merge lanes to S/B I-5 has a vertical clearance sign of 14'-1" in the S/B direction. The paving plans show new pavement in this section however there is no profile data provided for the FR/E-line in the conceptual plans that would indicate that there is a vertical adjustment to this section of roadway. Since this technically is within the project limits, are we required to change the profile in this area to meet the requirements of section 2.20.4.1, subsection Minimum Vertical Clearances, dealing with city streets?

Response: This has been addressed by addendum

207. **Question:** Is the design builder required to replace existing guardrail within the project corridor if the design or construction does not impact it?

Response: All Guardrail/Barrier within the project limits shall be evaluated and meet current WSDOT standards. See Appendix M1 Design Parameters Line. "Barrier Standard Run".

208. **Question:** Section 1-07.18 (1) 1. Workers' Compensation – Washington is a monopolistic state. Voluntary compensation, alternative employer and all states endorsements are not available through the Washington State Fund. Has WSDOT contacted Washington State Fund and have they agreed to provide? If not, these need to be eliminated for any Design-Builder to be in conformance with the contract. Can the owner eliminate these requirements?

Response: No change.

209. **Question:** Contract, Sec 1-04.1 – Intent of Contract, fourth subparagraph (and other similar locations): Design-Builder should not be obligated to hold harmless and indemnify WSDOT from claims by THIRD PARTIES with respect to portions of the project design where the Design-Builder is contractually obligated to comply with WSDOT established design criteria or where WSDOT has approved a design Deviation. Please include these exceptions to Design-Builder's duty to hold harmless and indemnify WSDOT with respect to the design of the Project. We are not suggesting a change to the Design-Builder's scope of responsibility for correcting errors in the design; only requesting a proper allocation of responsibility for a final design that complies with WSDOT mandated standards and permitted Deviations.

Response: No change.

210. **Question:** Contract, Sec 1-01.3(1) – Defined Terms, definition of “Basic Configuration”:
- i) At the end of the first bullet point, please add “including ramps and connectors.”
 - ii) In the first subparagraph after the list of bullet points, please clarify that the 2 ft vertical and 12 ft horizontal factors apply only to whether WSDOT’s prior written approval is required and not to whether a change in the Basic Configuration is a Necessary Basic Configuration Change. If a change in the Basic Configuration otherwise satisfies the requirement to be a Necessary Basic Configuration Change, it should not be denied that status because the Necessary Change is less than 2 ft vertical or 12 ft horizontal. The Design-Builder should have the right to rely on the Basic Configuration at bid time.
- Response:** i) The word “highway” includes ramps and connectors.
ii) The Department DOES NOT warrant the horizontal and vertical alignments that are part of the Basic Configuration to be suitable to match existing conditions. Addendum #10 will address the degree of accuracy of the horizontal and vertical alignment provided in RFP Appendix M5 as it pertains to the Basic Configuration.
211. **Question:** We read Question 98 and WSDOT’s answer to mean that if Design Builder encounters unforeseen hazardous materials Design Builder will be entitled to request equitable price and schedule adjustment for delays occasioned by the presence of such hazardous materials and any requisite remediation work. We also understand that Design Builder’s proposal must contemplate those hazardous materials at Water Quality Sites 1 & 2 which are identified in the RFP and must provide for remediation of those hazardous materials sufficient to accommodate Design Builder’s proposed Water Quality Site designs, but that unforeseen concentrations of identified hazardous materials, the presence unidentified hazardous materials, or any remediation work except that proposed by the Design Builder will be cause for equitable price and schedule adjustment. Please confirm our understanding is correct.
- Response:** The Design-Builder is to expect hazardous waste with Water Quality Sites 1 and 2. The Design-Builder shall include the cost for this Work in their proposal. Any other unexpected hazardous waste will be subject to Section 1-04.7 Differing Site Conditions.
212. **Question:** Technical Provision 2.8.4.3.6, Hazardous Waste Sites, and RFP Appendices E-7 and E-8 indicate that ground water under and proximate to Water Quality Sites 1 & 2 is contaminated. WSDOT’s answer to Question 100 puts prospective Design Builders on notice that the property owner(s) of Water Quality Site 2 have not reported releases of hazardous substances or ground water contamination to the cognizant environmental protection authorities. Where contaminated ground water is present, and neither the source nor the extent of the contamination are known, and the contemplated use of Water Quality Sites 1 and 2 will cause large volumes of water to be introduced onto these hazardous waste

sites, WSDOT and the hazardous waste site owners should indemnify the Design Builder from damages related to deemed "ownership" of existing hazardous materials, and the exacerbation and/or migration of contaminated ground water at and surrounding Water Quality Sites 1 & 2. Please confirm that such an indemnification is forthcoming.

Response This is addressed in Addendum #9. See Section 1-07.14(1).5

213. **Question:** The word “material” is regularly used in the Contract Documents, where this word is essential to interpretation of WSDOT’s intent it should either be generally defined, specifically defined with respect to the context where it is used, or both.

Response: No change will be provided except for material changes to the vertical and horizontal alignment of the Basic Configuration, which will be addressed in Addendum #10.

214. **Question:** ITP Section 3.5.4, The preliminary payment schedule is required to be submitted with the proposal. The extensive amount of items required for the proposal submittal and the fact that the cost estimate will be completed the day of the proposal due date, creates a difficult proposal closing. We request that the submittal of this payment schedule be delayed to three working days after the proposal is due.

Response: This revision was made in Addendum #8.

215. **Question:** Bridge 5/633W Over GNR 36th has existing clearance less than the 23' min clearance required now. By widening the structure, the clearance will be further reduced. Is there an agreement with their RR to allow reduced vertical clearance or does the RR need to be lowered? Please provide the agreement and insurance requirements for Burlington Northern.

Response: The minimum clearance over the railroad for this project is 23.5 feet, not 23 as asserted by the questioner. Having said that, the requirements for bridge 5/633W are as follows: The minimum vertical clearance for bridge 5/633W over the northerly tracks is 22.94 feet. The minimum vertical clearance for bridge 5/633W over the southerly tracks is 23.5 feet. The minimum vertical clearance under bridge 5/633E over all tracks is 23.5 feet. This will be addressed in Addendum 10.

216. **Question:** Technical Specifications 2.13.3, first paragraph - states: “1. ... Do not allow drainage from ROW to run onto private property.” Is the intent for the D-B to provide drainage collection ditches along the toe of slopes to collect non-pollution generating surface runoff where there are not currently such ditches (eg. along the east ROW line in the Woods Creek and Lowell slide area)?

Response: “1. ... Do not allow drainage from ROW to run onto private property” was deleted in Addendum 6. See also Table 2.13.5 in Addendum 7.

217. **Question:** Technical Specifications 2.13.3, third paragraph, third sentence - states: "The Design-Builder shall design the drainage for this Project's area utilizing this same basin approach, to accommodate highway corridor runoff that discharges to, or flows through of within the Site limits." Is it the intent that all pollution generating surface runoff within WSDOT ROW and the project limits be collected and treated? Specifically SB I-5 to EB US 2, the ramp goes under Everett Ave. and I-5 and will require pumping in order to treat within WSDOT ROW.
- Response:** The area of this ramp that is below the elevation amenable to gravity flow to one of the water quality treatment sites shall not require treatment. A pump is not required.
218. **Question:** TP 2.30 Establishes a 3-year pavement performance warranty. This provision is problematic due to the nature of the work associated with the proposed project (i.e., highway widening and overlay of existing pavements in areas affected by documented geotechnical stability issues). In order to avoid substantial (and potentially unnecessary) contingencies being included in the project bids, please consider limiting the pavement warranty to areas outside the Lowell Slide Area and to full-depth pavement construction only.
- Response:** Refer to the answer to question #18
219. **Question:** Form C-1 The requirement to list subcontractors down to the 1% participation level is incompatible with design build project delivery. Design will not be sufficiently advanced at bid time to provide meaningful bid packages to the subcontracting community. Please limit listing requirement to Major Participants.
- Response:** Addendum 2 revised *Form C-1* requirements.
220. **Question:** GP 1-05.1 States that WSDOT can substitute performance if Design Builder does not respond "promptly". Please insert a reference to the notice and cure person contained in GP 1-08.10.
- Response:** This specification is essentially the same as the WSDOT spec for design-bid-build. No change.
221. **Question:** GP 1-05.12(1) and TP 2.30.1 Warranty Bond amount specified in TP 2.30.1 may conflict with GP 1-05.12(1). Please resolve conflict.
- Response:** TP 2.30.1 Warranty Bond revised with Addendum #8 and GP 1-05.12(2) revised with Addendum #9. Conflict is not apparent with GP 1-05.12(1).
222. **Question:** GP 1-07.1 Change in Law references RCW 39.04.120 that relates only to Environmental Protection laws. Are there provisions elsewhere in the contract that provide relief for Changes to Law beyond environmental protection laws? Please add language to provide relief for Changes in Law beyond environmental protection laws.
- Response:** This specification is essentially the same as the WSDOT spec for design-bid-build. No change

223. **Question:** GP 1-07.13(4) States that Design Builder is not provided payment for delay related to damage caused by 3rd party. This provision may be contrary to Washington State Law. Please consider adding this relief provision where appropriate.
Response: This aspect of the specification is essentially the same as the WSDOT spec for design-bid-build. No change
224. **Question:** GP 1-07.14(1) With respect to insured losses, Design-Builder is not obligated to indemnify WSDOT for its sole negligence. With respect to uninsured losses, Design-Builder is only obligated to indemnify WSDOT to the extent of its negligence (i.e., comparative fault standard). See 1-07.14(1)2 It is not clear whether this distinction between insured and uninsured claims complies with the Washington anti-indemnity statute and case law, which arguably provides for a comparative fault standard for all indemnity obligations in construction contracts, not just those that are insured. We are not aware of any reported decisions allowing for such a distinction in the indemnity clause. Please clarify.
Response: This section was revised by addendum. The question is no longer applicable.
225. **Question:** GP 1-07.17(9) Utility Identification “Reasonable Accuracy” definition is not specific and appears to contain a circular reference between GP 1-07.17(4) and GP 1-07.17(9). Please provide clear definition of Utility Identification Reasonable Accuracy.
Response: See Addendum 2.
226. **Question:** GP 1-07.18(2) The \$10,000 threshold for WSDOT approval and \$50,000 limit on deductibles does not appear appropriate for the Everett HOV design build project given the magnitude of the project. Recent design build projects have involved deductibles on the order of \$1 million. Please consider deleting the \$50,000 deductible restriction and the deductible approval threshold restriction to allow for greater flexibility in procuring cost-effective insurance products.
Response: This issue has been addressed by Addendum.
227. **Question:** GP 1-07.18(1).6 The specification calls for a coverage period of 10 years. This coverage term may not be commercially available. This provision would indicate that a separate Project Specific Policy is called for. The cost of this policy/coverage will be prohibitive. We are still in the process of determining commercial availability of insurance products relative to this provision and will forward findings to WSDOT as soon as they are available.
Response: See Addenda.
228. **Question:** GP 1-07.18(2) Reference is made within this section of an “Owners and Contractors Protective Insurance Policy” (OCP). There is no specific reference that indicates a OCP Policy is required. Please clarify.

Response: This has been deleted by Addendum.

229. **Question:** GP 1-08.9(1) The contract allows for \$600,000 incentive payments relative to early completion (\$10,000 per day). The current formula will result in LDs on the order of \$27,000 per day. Is WSDOT willing to consider daily Liquidated Damages in an amount corresponding to daily early completion incentive (i.e., \$10,000 per day)?

Response: No.

230. **Question:** Contract Schedule 1-08.3 Primavera P3EC schedule format is specified for this contract. This is a new version of the P3 software and a quick poll of the I-5 Design Build teams indicated that none of us were aware this version existed. We contacted Primavera who told us this version is designed for network collaboration and web based collaboration and future interface with the web based version of Expedition. Apparently there is a difference in graphics language between the old and new versions. They said it should be compatible but cautioned us they could not guarantee success with both Suretrack and P3. This is new software that apparently none of the proposers have. Time to license it and get familiar with it is running short. We suggest the proposal schedules be submitted as P3EC files, P3 files, or Suretrack files saved in Concentric P3 format.

Response: Addendum 4 revised this section to include P3.

231. **Question:** Contract Definitions pg 16. A Necessary Basic Configuration Change – an error in the Basic Configuration should be corrected irrespective of whether it is material or not. Please delete the word “material” in the last line.

Response: This has been addressed by several Addenda..

232. **Question:** Contract 1-02.4(2) pg 27. In the third sentence at the end please insert the following “and are not included in Reference Documents” to eliminate any confusion regarding the role of the boring logs from a contract interpretation perspective.

Response: Refer to Appendix A. The boring logs provided by WSDOT are contract documents.

233. **Question:** 1-04.4 pg 39. The prohibition on the Design-builder adopting different means and methods than what it projected using in the Technical Proposal is inconsistent with the concept of design-build and will unnecessarily reduce design-builder’s ability to timely adapt to project conditions and to manage risk.

Response: If the Design-Builder wants to modify commitments made in the Proposal, they shall be subject to review by the Department.

234. **Question:** Contract 1-04.4(2)(f) pg 40. Please clarify that this exclusion from change order entitlement does not extent to required mitigation or remediation of contaminated groundwater.

- Response:** Hazardous materials are covered elsewhere in the contract.
235. **Question:** Contract 1-04.4(3) pg 41. By this provision, changes to the proposal documents can only be made via the value engineering process. Please consider using the threshold of “material change” to Technical Proposal.
Response: No change.
236. **Question:** Contract 1-04.4(4).4 pgs 43-44. Estimated net savings definition includes a deduction for WSDOT costs (see (c)). As a result, the price adjustment factor also includes a deduction for WSDOT costs. Based on this formula, WSDOT costs are deducted 200%.
Response: WSDOT costs deducted as described under “Price Adjustment factor” are generally intended to be WSDOT’s labor costs for reviewing and approving the VECP. These costs will not generally be included in item (c) under “Estimated Net Savings”.
237. **Question:** Contract 1.04.5 pg 47. Due to the importance of meeting the notice of protest requirement, please consider replacing “immediately” with “promptly”.
Response: “immediately” is verbatim from current WSDOT spec. Changing this language will be on a statewide basis and not on a project by project basis. WSDOT will keep its current protest procedures at this time.
238. **Question:** Contract 1.04.5 pg 48. Please confirm that the Dispute Review Board will be authorized to hear issues other than change orders. Its relationship to the later dispute resolution clauses is unclear.
Response: The Disputes Review Board will be authorized to hear any issue except those specifically precluded by the Contract.
239. **Question:** Contract 1-04.7 pgs 52-53. Design-Builder bears all Differing Site Condition costs, which in the aggregate are less than \$2 million. Please insert language that indicates Differing Site Conditions expressly exclude utilities, archaeological finds and hazardous materials. (Similar to 818)
Response: No change.
240. **Question:** Contract 1-05.1 pg 54 This clause is confusing in light of the DRB clauses and later dispute resolution clause. All the dispute resolution clauses have not been integrated. The nature of design build delivery necessitates access to alternative disputes resolution for all significant disputes in order to facilitate timely and constructive issue resolution. If litigation is presented as the only avenue for disputes resolution for many significant issues, disproportionate risk and contingency funds will likely be included in the bids. Please seriously consider eliminating all restrictions to the DRB process.
Response: Any dispute can be taken to the Board unless the contract specifically precludes it.

241. **Question:** Contract 1-05.4(1) SP 2.30.2 pg 56. The reference free from defects should be limited to construction. Warranting that design is free from defects invalidates professional liability coverage.
Response: Section 1-05.4(1) Performance Standards will be deleted and replaced with the following:
- Design-Builder shall furnish the design of the Project and shall construct the Project as designed, in accordance with all professional engineering principles and construction practices generally accepted as standards of the industry in the State of Washington, in a good and workmanlike manner, free from defects, (except to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents), and in accordance with the terms and conditions set forth in the Contract Documents.
242. **Question:** Contract 1-05.6 pg 57. In the paragraph addressing who bears the cost of uncovering and restoring work, please modify clause b) to read “if it was placed without the notice to WSDOT required under the QA/QC plan or as set forth under the Schedule”.
Response: This has been modified by Addendum #9
243. **Question:** Contract 1-05.10 pg 58 This provision should be modified to permit the assignment of the guarantee or warranty to WSDOT after Design-Builder’s warranty period.
Response: This will be acceptable to WSDOT.
244. **Question:** Contract 1-07.1 pg 84. The third paragraph allocating to Design-Builder sole responsibility for the safety of all persons on the Site is inconsistent with the provision that states that Design-Builder is not responsible for damage caused by public traffic (see 1-07.13(3)). This is not a site to which Design-Builder can restrict the access of the public.
Response: No change.
245. **Question:** Contract 1-07.13(1) pg 99. This provision is inconsistent with 1-07.13(3) regarding relief of responsibility for damage by public traffic. This provision should cross reference (3).
Response: No change.
246. **Question:** Contract 1-07.13(2) pg 100. This provision is inconsistent with 1-07.13(3) in that it requires a written request and approval to be relieved from responsibility for damage where 1-07.13(3) requires no request or approval.
Response: No change.
247. **Question:** Contract 1-07.13(2).1 pg 100 Extraordinary Maintenance is not defined in the definition section. Please provide a definition and perhaps some examples .

Response: Extraordinary Maintenance will be deleted in Addendum #10.

248. **Question:** Contract 1-07.14(1) pg 101. The indemnity needs to be limited to third party liability otherwise it will trump any statute of limitation provisions applicable to breach of contract claims. The indemnity for negligent exacerbation of pre-existing Hazardous Substances needs to be limited to “the extent” that the negligence exacerbated the pre-existing Hazardous Substances. The indemnity covering disruption of other contractor makes the design-builder the party who must incur costs to accommodate other’s work and makes it liable for damages that it would not otherwise be liable for under the Washington State’s economic loss doctrine. Since Design-builder can’t assert claims for any delay costs that it incurs due to other contractors, it completely shifts the costs and schedule impacts to only one party, the Design-Builder. The indemnity needs to terminate after 6 years in order to be consistent with the Washington state statute of repose. After the work has reached final acceptance and for injuries occurring thereafter, Design-builders obligation for indemnity for negligence for should be limited to its negligence since Design-builder no longer is in control of the site and this will be an operating road with drivers and WSDOT maintenance issues. Design-builder should not be required to indemnify for operational liability other than due to the extent of its negligence.

Response: Response: The answers are provided per question and are as follows:

- a. The following will be added by Addendum #10 to the last sentence in Section 1-07.14(1) General Indemnities:
(The requirement to provide an indemnity for breach of contract set forth in this section is intended to provide protection to WSDOT with respect to third party claims associated with such breach. It is not intended to provide WSDOT with an alternative cause of action for action for damages incurred directly by WSDOT with respect to such breach.); and
or
- b. The question concerning negligent exacerbation of pre-existing Hazardous Substances is unclear, but WSDOT will not make a change to the Contract.
- c. The question covering disruption of other contractors does not involve Economic loss doctrine and no change will be made to the Contract.
- d. The question covering impacts is answered with the following:
Section 1-08.8 provides for a time extension for delays to the critical path caused by action, neglect, or default of WSDOT or any other contractor or design-builder employed by WSDOT. Similarly, Section 1-08.8 provides for a time extension for delays to the critical path due to exceptional causes provided the Design-Builder had no control over the cause of the delay and could have done nothing to avoid or mitigate the delay and that

the delay did not result from a risk allocated to the Design-Builder under the Contract. Section 1-04.4 specifically provides for the Design-Builder to be responsible for any cost increases associated with actions or inactions on the part of another contractor. Consequently, the Design-Builder may have a basis to obtain a time extension but has no right to additional costs. No change will be made to the contract.

- e. There will be no change made to the contract concerning the question about termination of indemnity
- f. The question concerning work after final acceptance is unclear. In all cases, Design-Builder is responsible for indemnification for claims, which result from the Design-Builder's (or an entity the Design-Builder is responsible for) acts and/or omissions. No change to the Contract.
- g. The question concerning indemnification for operation liability is unclear and no change will be made to the contract.

249. **Question:** Contract 1-07.14(1).5 pg 104. PSURA is not defined in this agreement. What is the definition of PSURA?
Response: Section 1-07.14(1).5 of the General Provisions was deleted in Addendum #8.
250. **Question:** Contract 1-07.16(4) pg 106 The Design-Builder's entitlement for a change order for archaeological and historical objects is not clear in this provision. What portions of 1-04.4 and 1-08.8 are applicable?
Response: No change.
251. **Question:** Contract 1-07.17(7) pg 113. Can you please confirm that the reference to SMP is in error as that would appear to apply to the Seattle Monorail Project?
Response: Revised by Addendum.
252. **Question:** Contract 1-07.18(2) pg 122. The ten-year requirement may not be available in the marketplace. (Similar to 844)
Response: This has been modified by Addendum.
253. **Question:** Contract 1-08.6 pg 139. In the third and fifth paragraphs please replace "immediately" with "promptly".
Response: No change.
254. **Question:** Contract 1-08.11(1).1 pg 147. Please clarify the meaning of the following sentence "Incentive Awards not earned because of less than superior performance in any measured period will result in reduction of the Contract Price." This clause could be read as converting the Incentive Award into liquidated damages reducing the Fixed Price. Please clarify.

Response: Revision has been made in addendum #8.

255. **Question:** Contract 1-09.9(3) pg 171. Design-Builder should have the right to provide a retainage bond or letter in credit in lieu of retainage.

Response: The spec allows for a bond, at the discretion of WSDOT.

256. **Question:** Contract 1-09.13 pg 178. Given the size of the contract, please consider significantly increasing the dollar value of claims that can be resolved by binding arbitration. Other WSDOT design-build contracts have used higher amounts such as \$5 million.

Response: No change.

257. **Question:** Contract 1-011.4 pg 183. The requirement to provide copies of all correspondence between Design-Builder and any party pertaining specifically to this Project is far too broad. Design-Builder needs to be able to communicate freely with its subcontractors and suppliers, with potential bidders for subcontract work, and with members of the joint venture and with legal counsel. This obligation should be limited to correspondence with governmental entities and others whose approvals are required.

Response: WSDOT does not want correspondence between the Design-Builder and subs/suppliers/potential bidders/JV members/legal council except as specifically required elsewhere in the contract.

258. **Question:** Contract. It has been customary on past significant design build projects across the nation to include an aggregate cap on liability (including liquidated damages). On other design-build contracts, WSDOT has agreed to both cap aggregate liability and liquidated damages. Will WSDOT please consider including such a cap in this contract?

Response: No change.

259. **Question:** Contract. There is no exclusion of consequential damages contained in the contract. Yet in 1-09.4, WSDOT limits its exposure for consequential damages. Many public sector design-build contracts include exclusions of consequential damages. Will WSDOT please consider including such an exclusion in this contract?

Response: No change.

260. **Question:** Contract. There is no indemnity from WSDOT for CERCLA liability for pre-existing hazardous waste disposal nor are provisions provided for the Design Builder to use the Agency's EPA Identification Number for manifests documenting the waste generator. Please add these provisions.

Response: See 1-07.14(1).5 of Addendum #10.

261. **Question:** Technical Specs 2.30.2.4. The obligation to extend the warranty for re-work amounts to an evergreen warranty which is extremely problematic.

Please establish a maximum warranty obligation for all re-work after Physical Completion.

Response: See the answer to question #190.

262. **Question:** If we build a wall or embankment on an existing embankment, do we need to mitigate the existing embankment so it meets the seismic stability under the current 11/2004 Geotechnical Design Manual?

Response: The answer to this question depends on whether the wall or embankment are defined as "critical." For **walls:** Walls taller than 10 feet, or where the wall is within 10 feet of the traveled way, should be designed for global seismic stability. This includes walls supported on existing and new embankments. If necessary, mitigation measures should be implemented. For **embankments:** New embankments placed on or alongside existing embankments should only be designed for seismic stability in the event that their failure would result in damage to a "critical" structure that is supported by the embankment. This includes bridge piers, adjacent buildings, or walls meeting the requirements outlined above.

263. **Question:** Do the existing embankments in critical fill areas need to be mitigated to meet current seismic stability under the current 11/2004 Geotechnical Design Manual.

Response It is unclear whether the term "critical" refers to the WSDOT definition (see Chapter 9, pg 9-9), or if this refers to "critical areas" identified by the local Critical Areas Ordinance, in this case Snohomish County. Again, existing embankments do not have to be designed for global seismic stability, providing they do not support bridge footings or "critical" walls, or could impact important structures "externally" located.

264. **Question:** It appears that offsite flow was not taken into account when sizing the WQ facility #1 outfall. Please verify that offsite flow was considered in sizing the 54" outfall.

Response: See Addendum #7 Section 2.13.5

265. **Question:** WQ Facility #2 outfall (the following references are to the Storm water Technical Report appendix H1).

The outfall calculation shows that the outfall has 92 cfs capacity (page J-14). In Lowell basin, the total on-site sub basin area is 64.38 acres (page F-2).

The calculated flow going to this outfall is 38.45 cfs from the Lowell on-site basin (page J-14): 28.34 cfs from 64.36 acres (page J-10)

10.11 cfs from 20.35 acres (page J-12)

Total flow is 38.45 cfs from total area of 84.71 acres

Page F-2 shows offsite existing conditions to be 319.37 acres pervious + 176.38 acres impervious = 495.75 acres total. We ran an MGSFlood calculation to determine the 100-year flow and found it to be 86.4 cfs. If the outfall capacity is

92 cfs, and there is 38.45 cfs (on-site) and 86.4 cfs (off-site) going to this outfall, for a total of 124.85 cfs, then the outfall will have to be upsized. How should we proceed?

Response: See Addendum #7 Section 2.13.5

266. **Question:** At water quality facilities 4 and 5, a backflow analysis using StormShed 2G software was performed and found that three existing catch basins will overtop at the following locations: 280+35, 281+70, and 284+25. To eliminate the overtopping, the model was rerun upsizing four pipe segments from 36" to 48". Will the design-builder be responsible for upsizing the pipe and for acquiring the necessary permits?

Response: Yes. See 2.13.3 paragraph 2 and 2.13.4.1 paragraph 3. Where drainage patterns must be changed from existing, the Design-Builder shall secure all permits and drainage easements. Please also consider See Addendum #7 Section 2.13.5

267. **Question:** Please provide either stations and offsets or a location map for the structures referenced in Appendix H-5 "Lowell Recommendation Report", specifically for the following structures:

Inlet G15	CBG10	CBG16
CBG13	CBG7	MHG6
MHG5	MHG11	CBD18
CBD17	CBA6	CBA8
CBC7	CBC8	MHA1
MHA3	MHC3	MHC5
CBE9		

Response: A location map was included in Addendum 9.

268. **Question:** For pipe, inlets and water quality facilities, is the storm water to be removed and treated from within the entire roadway corridor or is the intent just to capture runoff from pavement surfaces for storm water treatment?

Response:

See Table 2.13.5 in Addendum 7.

269. **Question:** Please confirm that no fish passage is required for the three drainages: Wood Creek, Unnamed Creek draining the Lowell Basin, and Bigelow Creek flowing beneath I-5.

Response: See answer to #173.

270. **Question:** We received a letter today from the City of Everett, outlining their "Issues, Expectations, and Base Principles" for the Everett DB Project. I am requesting that WSDOT review this letter and inform the teams which items, if any, are considered contract requirements. We are happy to try and work with the City on their issues, however we need to know which items WSDOT wants

included in our bid to you and which items need to be handled with the City separately.

Response: Issues mentioned in the letter from the City that are contract requirements have been included in the Contract.

271. **Question:** Re: Q&A #47: The answer indicates WSDOT “did not do an exhaustive review.” Does that mean there may be other requirements for future widening associated with the future 41st Street Interchange project or that there may be other projects that would require accommodation for future widening?

Response: It means that there may be other requirements for future widening associated with the future 41st Street Interchange

272. **Question:** In the Highway Runoff Manual, page 5-133, drawing RT.16.1 (Sand Filler Vault) indicates the requirement for a removable concrete panel to be provided over the entire sand filter area in the vault. Is it WSDOT’s intent that this requirement be met on the vaults on the Everett project?

Response: Yes.

273. **Question:** Section 2.13.1, item 3, of the technical specs requires, “Maintain existing off-site flows where passing through the Project area by providing permanent new or by extending, replacing, and/or protecting existing ditches, culverts, storm drains, and outfalls.” Also, according to the Stormwater Technical Report (dated 8/6/2004), Chapter 5 - Drainage Approach, Section titled - Water Quality for 36th Street Combined Basin, page 31, third item states, "Use existing and build new conveyance systems (where necessary) in the north and southbound I-5 lanes to separate onsite from the offsite runoffs."

Response: This doesn’t seem to be a question, but please refer to table 2.13.5 in Addendum #7.

274. **Question:** Does WSDOT allow conveyance of City of Everett flows within its R/W? If not, what is WSDOT’s intent?

Specific area of concern is the significant volume of City of Everett water that appears to currently enter WSDOT R/W in the WQ #2 system:

LL Station 559+20 Approx drainage area = 9.2 acres; est 25-year storm peak flow rate = 11.3 cfs

LL Station 567+00 3.5 acres, 2.5 cfs

LL Station 572+50 3.9 acres, 2.0 cfs

LL Station 587+00 (from 41st Street area) 15 acres, 18 cfs

Response: Refer to table 2.13.5 in Addendum #7.

275. **Question:** Can we use a font smaller than Times New Roman 12-point for the organization chart?

Response: Yes

276. **Question:** We have a question similar to #96 (repair of damaged pavement not caused by design-builder), which was answered in Q&A #5. Is the Design-Builder required to repair any distressed areas or other preexisting bridge/structure issues that are not the result of the Design-Builder's actions?
Response: When widening existing bridges, the Design-Builder is expected include in the lump sum contract price the cost to do repair work to the existing bridges as necessary to tie in to the existing bridges, unless the existing conditions are of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the type of Work provided for in the Contract and the Work site characteristics, provided in all cases that Design-Builder had no actual or constructive knowledge of such conditions as of the Proposal Date.
277. **Questions:** Section 2.5.1 (pg #22/313)-General: The General Scope discusses survey mapping relative to, among other things: Right of Way surveys; Land Corner Records
Question: It is our interpretation that this would only be required if our new contract work comes within close proximity of the limits (25', per section 2.5.1). The D-B will not be obligated to perform a full site ROW and Land Corner Records mapping. This could be very expensive and time consuming. Is this interpretation correct?
Response: Correct.
278. **Question:** Section 2.5.5.2 (pg #27/313)-As-Built: This section states that the D-B shall produce reports documenting the location of the as-built alignment; profiles; structure locations; utilities and survey control monument placement. Does DOT intend for the D-B to generate final roadway/ramp alignment (horizontal & vertical) and profiles for all roadways; walls, etc.? This could be very expensive and time consuming.
Response: It is expected that this documentation will be the same documents that the designer provides to production personnel to build the project.
279. **Question:** Technical Specifications, Section 2.13, Drainage Pages 117 and 118: Page 117 states "The Design-Builder shall analyze the existing and proposed culverts and drainage-ways impacted, replaced and created..." whereas Page 118 states "All existing and proposed cross-drains and culverts...shall be sized and/or checked for capacity..." Page 117 implies that an existing culvert would not need to be analyzed if the project is not impacting the culvert. Page 118 implies that the culvert would need to be analyzed anyway. Which is required?
Response: See Addendum #7.
280. **Question:** Page 118, Table 2.13.4: What is MCP pipe material?
Response: Metal Corrugated Pipe. However, Table 2.13.4 was deleted in Addendum 7.

281. **Question:** General question: We need clarification on the page size and count. How does WSDOT want the sections presented? 8-1/2 x 11 separate from the 11 x 17? How does that affect the page count by section?
Response: This was addressed in Addendum #8 and #9.
282. **Question:** Section 1-011.10 Early Completion first paragraph ... "construction that is to start prior to completion of 100 percent Released For Construction Documents ... etc. appears to conflict with Section 2.13.5.2 Are we reading that right?
Response: This will be addressed in Addendum #9.
283. **Question:** Please clarify Addendum 7 Item 26 A. (TS 2.14.3) where it says the noise wall surface pattern shall be " at the beginning and end of noise walls, for a distance on both ends of the wall of 200' or 10% of the wall length".
Question: is the 200 feet a maximum or minimum?
Response: Whichever is less. See Addendum #10..
284. **Question:** Addendum #7 item 26 "Performance Requirements" for surface finishes. Given the conditions of A, B and C, it appears the only treatment to noise walls facing away from I-5 occurs at NW 7. Is this correct?
Response: This is not correct. Section 2.14.4.7.3 addresses aesthetic treatment for the side of the noise walls that faces away from I-5. Addendum #10 will reorganize this for clarity.
285. **Question:** Part D references Bridge 5/642, 23rd Avenue, since no bridge widening is occurring at this location are we to assume that WSDOT will require a facing over the existing abutment?
Response: Yes. This is a Neighborhood Enhancement Area (Addendum #9)
286. **Question:** Part E Requires treatment of retaining walls visible to the traveling public. Does the traveling public refer to I-5 traffic only?
Response: No. This refers to I-5 and City streets. This will be addressed in Addendum #10..
287. **Question:** RFI #5 Answer to Question 101 provided the following "An addendum to the Instructions to Proposers will be issued providing the requirement of the Proposal Price breakout to address this possible situation".
Response: A Proposal Price breakout for landscape and aesthetic improvements will not be provided on Form B-1 Price Proposal. Information for pricing these elements was provided in Addendum 7 and is to be included in the Proposers Lump Sum.
288. **Question:** Reference Addendum 7 item 26, Section 2.14.3 Performance Requirements, with this revision to the technical provisions you are requiring the DB Contractor to implement the conceptual surface finishes provided in appendix M7A at abutment and wall components of existing and new bridges. What means

- and methods are acceptable to WSDOT to get the desired texture on the existing concrete surfaces? Can the DB Contractor use tile, paint or hang thin set pc panels to accomplish the desired look? Please review and clarify.
- Response:** This is an area where we are looking to the Design-Builder for innovation. The WSDOT concept is precast fascia panels. We will consider other approaches. Simply painting is not acceptable, nor very innovative.
289. **Question:** Is there supposed to be a signature block at the end of the Price Proposal?
- Response:** One will be added in Addendum #10.
290. **Question:** Regarding Addendum 9, Aesthetics at new and existing Abutments. Addendum 9, item 22D requires that the Design-Builder shall implement the conceptual surface finishes “at abutments and wall components of the following existing and new bridges:...”. Does this only apply to the widening portion of the existing bridges or, does it apply to the entire bridge? Or, asked another way, do we have to change the existing surface finishes on existing bridge abutments and wing walls if we’re not doing any other work on these bridges?
- Response:** For bridges that are widened, the surface finishes are required on the old and new abutments as listed. The idea is to make these bridge abutments look uniform and entirely new and to eliminate the appearance that they have been widened. Some bridges in the list are not widened at all, and they require the aesthetic treatment to improve the Gateway or community.
291. **Question:** Regarding Addendum 9, Aesthetics at beginning and end of noise walls. Addendum 9, item 22A requires surface finishes on both ends of the wall for 200 ft or 10% unless otherwise noted. Is this which ever is greater?
- Response:** Whichever is less. See Addendum #10.
292. **Question:** Will WSDOT provide long-term liability and indemnity back to D-B if the pre-existing hazmat is disposed of in a contract conforming manner?
- Response:** See 1-07.14(1).5 in Addendum #9.
293. **Question:** Technical Specifications 2.8.4.3.6 (added by Addendum #7) WSDOT in the past on other design-build projects has provided indemnities associated with remediation of pre-existing hazardous materials and has agreed to sign all hazardous waste manifests as generator. These are customary provisions and given the scope reasonable to request. WSDOT shall indemnify, protect, defend and hold harmless Design-Builder from all third party claims (including but not limited to response and remediation costs, administrative costs, fines, charges, penalties and cost recovery or similar actions brought by a governmental or private party, including costs incurred in connection with an independent clean up action under MTCA and including third party tort liability) arising, directly or indirectly from any presence, release or disposal of any Hazardous Waste removed from the Site for transport and disposal for which WSDOT has been identified as the generator.

Except for Hazardous Waste introduced to the Site by Design-Builder or pre-existing Hazardous Waste to the extent negligently exacerbated by Design-Builder, WSDOT shall be identified as the generator on any hazardous Waste manifest for the transport or disposal of Hazardous Waste in connection with the performance of the Contract.(This language is based upon Tacoma Narrows Design-Build contract)

Response: See 1-07.14(1).5 in Addendum #9.

294. **Question:** 1-01.3(1) Necessary Basic Configuration Change definition This definition still only applies to correction of a material change in the Basic Configuration. This is problematic because Basic Configuration is one of the few documents behind which WSDOT will stand. As such, it is not appropriate to argue that a defect which ends up resulting in costs and delays to Design-Builder should be Design-Builder's risk. This will only result in disputes regarding what is material. Other clients have agreed to delete the "material" language or to put ranges for deviations right in the contract. This definition is compounded by the new language in 1-04.4(8) which expressly provides that Design-Builder bears the cost and delay risk for inaccuracies in the Basic Configuration unless material.. Delete "material" and delete the new language added in 1-04.4(8)
- Response:** A range for vertical and horizontal alignment will be provided in Addendum #10.

295. **Question:** 1-01.3(1) Physical Completion Date definition Physical Completion Date - the changes to this definition create significant problems under the contract. Physical Completion now includes all warranty work (i.e. the warranty period). This might be an error in the drafting and what they really intended is completion of punch list work (see the new definition of Final Acceptance which also includes warranty period). This revised definition is a problem because of 1-07.13(1) where it states that Design-Builder has risk of loss until Physical Completion (i.e. expiration of warranty period). This will be unacceptable to a Builders Risk insurer. The retainage provision also is tied to Completion which in itself is not a defined term but could be interpreted as Physical Completion. Holding retention until 2 years after completion is not acceptable. Delete "including, but not limited to, all Warranty work"
- Response:** This has been revised in Addendum #9.

296. **Question:** 1-03.3(1) Relocation Costs definition. It will be difficult to price necessary utility easements without input from the utilities in advance as to what is required. Delete (including costs incurred by Utility Owners for acquisition of necessary Utility Easements).
- Response:** It is expected that the Design-Builder will get input from the utilities before submitting the Proposal.

298. **Question:** ITP Section 4.5 says Proposals may be declared non-responsive if Price exceeds the Department's budget. Is the Estimated Project Cost contained in ITP Section 1.8 (\$165 million) the same as the Department's budget?

- Response:** No. The \$165 million is the engineer's estimate for the design-build contract excluding rule 720 sales tax. The Department's budget for the project is \$221.7 million, which must pay for right of way, WSDOT costs to administer the contract, the environmental process, and all other WSDOT costs expended to date in developing the RFP. The department's budget for the Design-Build contract, which is what is being referred to in the question, is more than \$165 million, and considerably less than \$221.7 million. Non-responsive has been removed from the ITP in Addendum #10.
299. **Question:** ITP Section 3.1.3 Format says that all text, except for the front cover, but including charts and exhibits, must use the Times New Roman font, 12 point type. We believe this requirement for font type and size may be too restrictive because it would include: 11 design drawings, graphics and even the schedule submittal. We request that the language be revised as follows: "All text, except for the front and back cover, design drawing submittals and hard copy schedule submittals, but including charts and exhibits, must use the Times New Roman font, 12 point type and size requirements. Information included in the header and footer of the document (eg., page number, document title) is also exempt from the font type and size requirements."
Response: Addressed in Addendum #8 and #9.
300. **Question:** Does WSDOT intend that the preliminary design plans be folded to 8 1/2 x 11 and included with the text in the applicable sections? Or is a separate volume of flat 11 x 17 plan sheets anticipated? And do the 11 x 17 plans count toward the page limit for the sections (where applicable)?
Response: Addressed in Addendum #8 and #9.
301. **Question:** Please clarify your response to Question No. 91. The ITP indicates you would like a "plan view of the Project that identifies the location, type ...". Your response changes the RFP requirements to provide a plan sheet for each bridge. These are two different requirements. If you would like a plan sheet for each bridge, then the 25 page limit for Structures is insufficient to meet all of the RFP requirements for Section 11. We request your original ITP requirement for a "plan of the Project", not individual plans for each bridge.
Response: We would like a plan for every bridge and wall type. Addendum #9 revised page limits.
302. **Question:** ITP 3.5.4 pg 18 Please provide language that clarifies that the preliminary payment schedule will not be deemed or be converted into a Maximum Payment Schedule.
Response: The preliminary payment schedule will not be deemed or converted into a maximum payment schedule.

Bob Dyer
Project Director